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PUBLIC MONEY AS A TYPE OF PUBLIC PROPERTY: ADMINISTRATIVE AND LEGAL REGULATION

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SUMMARY

Public money is a legal category developing constantly, that is why appropriate legal support of this institute is of great importance for our State. The European experience of regulatory and legal consolidation of the public money legal regime is examined, suggestions for Ukraine are formulated. It is stated that public money is associated with categories of public management and administration when using financial resources and satisfying public interests and social needs. It is emphasized that the public money legal regime is based on relative independence of state and municipal finances under the conditions of integrity of the public management system of national financial and credit as well as monetary system.

Key words: public property, public money, public property legal regime, public administration, public interest, public management modernization.

ПУБЛІЧНІ ГРОШОВІ КОШТИ ЯК ВИД ПУБЛІЧНОГО МАЙНА: АДМІНІСТРАТИВНО-ПРАВОВЕ РЕГУЛЮВАННЯ

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АНОТАЦІЯ

Публічні грошові кошти є юридичною категорією, що постійно розвивається, саме тому належне правове забезпечення цього інституту є вкрай важливим для нашої держави. Досліджено європейський досвід нормативно-правового закріплення правового режиму публічних грошових коштів, сформульовано пропозиції для України. Констатовано, що публічні грошові кошти пов'язані з категоріями публічного управління та адміністрування під час використання фінансових ресурсів для задоволення публічного інтересу й суспільних потреб. Наголошено на тому, що правовий режим публічних грошових коштів заснований на відносній самостійності державних і муніципальних фінансів за умов єдності системи публічного управління національною фінансово-кредитною, грошовою системою.

Ключові слова: публічне майно, публічні грошові кошти, правовий режим публічного майна, публічна адміністрація, публічний інтерес, модернізація публічного управління.

Problem statement. It is suggested starting the scientific analysis of the said topic on the public money legal regime with understanding of the fact that in organizational and managerial, socio-economic micro- and macro aspects it is notable for its transparency and dynamics of multi-aspectual connections between its elements creating a system. This state of things is due to the fact that public money is a legal category developing constantly under the conditions of volatility of financial resources, correlation of the income and expenditure level, changes in demand and supply under market conditions of the innovative economy formation. Such volatility of the public money legal regime defines also its corresponding flexibility and multilink structure. Taking into account national tendencies of redistribution of a social product, the legal regime mentioned plays a role of one of key regulators for the economic development and satisfaction of public interests in terms of growth in national income.

The objective of the article is to develop suggestions for improving the regulatory and legal regulation of the public money administration based on positive experience of European countries in this field.

Presentation of basic material. In Europe, the public money legal regime is regulated on the constitutional level. In

particular, the Constitution of the Federal Republic of Germany contains section "Finances" concerning budget revenues and expenditures [1]. Article 70 of the French Constitution also defines the procedure for the use of public money in terms of cooperation between the Government, the Parliament and the Economic, Social and Ecological Council [2].

In Ukraine, on the other hand, although the legal category of "Finances" [3] (Article 140 of the Basic Law) is enshrined on the constitutional level, but there is confusion of State finances' and public money' (public finances) concepts at the legislative level. So, expressing opinion on this matter, it is necessary to pay attention to the provisions of Clause 2, Part 1 of Art. 1 of the Law of Ukraine "On transparency of the use of public money" [4], Section 2 of the Strategy of the public finance management system reformation [5] and Paragraphs 1, 5 of Section 3 of the Strategy for sustainable development "Ukraine – 2020" [6]. In fact, legal categories used in the above-mentioned provisions are associated with money accumulated in specific funds with the rights for them owned by the state or a territorial community.

It can be stated that public money is connected with the categories of public management and administration when using financial resources in order to meet public interest and social

needs. Basically, it refers to public financial capital: funds of state budget money of Ukraine as well as local budgets, credit resources, funds of state banks and public law funds, state targeted money, as well as public money, obtained from the results of economic activity of private law entities. As for doctrinal interpretation of the public money, this concept is considered through the prism of pluralistic theory:

– as a subject of legal regulation - socio-economic relations that arise in the process of formation, distribution (redistribution) and use [7, p. 36] of money from public centralized and decentralized funds necessary for the functioning of public administration entities [8, p. 7];

– as an object of legal relation – an instrument used by public administration carrying out its activities [9, p. 19]; an object of financial activity eligible for economic turnover [10, p. 75]; monetary fund's of the state, state-territorial and municipal entities, enterprises, institutions, organizations and other economic entities used for the material provision of society needs and production development [11, p. 4, 5].

In the field of perception of the public money legal regime, it should be noted that, in practice, there are still a great deal of problems associated with the use of this type of public property. These are as follows: a lack of efficiency and quality of state policy in terms of limited resources in public management and budget administration of public money; not fully appropriate conditions of vertical and horizontal, as well as spatial, including interdepartmental exchange of information; incomplete automation of work with large volumes of data; existence of rather high corruption risks, etc. The following drawbacks of public management and administration of public money mentioned can be seen in the course of information and analytical systems and module function analysis as for the use of public money such as “E-data”, “Prozorro”, an electronic taxpayer cabinet, the Unified state web-portal of open data, the Unified state register of declarations of individuals authorized for the functions of state or local self-government, the System of value added tax electronic administration, etc.

To resolve controversial procedural aspects of the use of public money as public property, it is necessary to consider three basic theories having economic nature: the theory of social choice in democratic environment (J. Buchanan); the theory of social welfare, the decisive meaning of which states that changes in the field of finance are appropriate only when the welfare of individual social groups improves without deterioration of others (V. Pareto); the theory of fiscal exchange “taxes-welfare” (K. Wiccel, E. Lindall, J. Buchanan) [12, p. 32].

The process optimization of the public money legal regime implementation should deal with regulatory, institutional and organizational and technological principles of the public management modernization. This, in turn, means improving the regulatory and legal basis, including at the constitutional level regarding the provisions on public finances, in the field of use of such type of public property as a part of development of strategic and standardization, methodological and procedural dimension, macroeconomic prediction and medium-term planning; institutional optimization for strengthening cooperation between public administration bodies as well as private law entities that are provided, in particular, by monitoring and auditing of the public money use effectiveness; organizational changes in terms of conduct of informational and educational campaigns for relevant state officials and civil society representatives; technological modernization of information systems, analytical modules, portals, services of public money management, software and technical safety strengthening.

The results of the ways improving the public money legal regime can be clearly seen through public management and administration of public property' use in a certain type. In

addition, as P. Schroeder notes, the concept of public management as a regulatory activity of public management should be distinguished from “administration” category, which displays itself in the field of public finance [13]. So, administrative and financial dimension of the public money legal regime should be based on the following characteristics: the purposive nature of public administration entities' activity expressed in the purpose achievement in the field of the public money use, in particular through a single web portal (axiological orientation); subsidiary nature in relation to legislative activity, subsidiary function based on and for implementation of legislative norms in order to implement the law requirements; regulation of competence expressed in the presence of procedural legal norms (public and procedural regulatory basis); regular, permanent nature of the activity (permanency); the existence of powers in the public administration bodies; administration for the purpose of implementing state financial policy and strengthening discipline (managerial dimension) [14, p. 55]. It is these objectives and tasks of the public money legal regime that stipulate the dimension of certain forms of public management and administration in the field of the use of public property type mentioned.

Conclusions. It is worth noting that the development of effective and efficient regulatory base to implement the legal regime mentioned is of vital importance. First of all, it is necessary to create a procedural component of regulatory legal support for state policy implementation in the part of public money use. In particular, the main focus must be on public finances as well as administration procedure itself in the field of public management and administration of public property of such type. Therefore, it is necessary to comprehensively regulate the field mentioned for the most of actions executed by public administration entities, at first, in the area of regulatory basis unification for administrative procedure implementation regarding public management when using the public money, and budget administration. First of all, this can be achieved by adoption of law on regulatory and legal acts, The Administrative Procedural Code of Ukraine and framework changes in legislative acts on the procedure administration of the public money use. This way, it will be reasonable to speak about unified legal frames of effective and transparent implementation of the public money legal regime, first of all, based on digitization of procedural dimension through a single portal of the use of public money. It is equally important in this sense to establish a mechanism and forms of activity of relevant public administration and private law entities concerning the planned and actual use of the type of public property mentioned.

It is necessary to emphasize that the public money legal regime is based on relative independence of state and municipal finances under the condition of integrity of public management of national finance and credit, and monetary system. Such public money has, first of all, clear social purpose within the budgets, non-budget and decentralized funds.

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